

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

(THROUGH VIRTUAL MODE)

Reserved on: 31.05.2021
Pronounced on: 16.06.2021

**WP(C) No.1184/2020
CM Nos.3452 & 3453 of 2020**

PREM SINGH

...PETITIONER(S)

Through: Mr. P. S. Pawar, Advocate.

Vs.

UNION TERRITORY OF J&K & ORS.

....RESPONDENT(S)

Through: Mr. S. S. Nanda, Sr. AAG-for R1 to R5 & R8.
Mr. F. A. Natnoo, AAG-for R6 & R7.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1) The petitioner is aggrieved and has challenged the following communications/certificate:

- (I) Communication dated 4th of July, 2020, issued by respondent No.6 and addressed to respondent No.4, whereby request has been made to the later to ensure the presence of concerned Tehsildar along with revenue officials and police force to avoid any objection or resistance from the local people for acquiring land for construction of

Receiving Station at Greater Kailash under Central Sponsored Scheme PMDP Urban;

- (II) Certificate dated 6th of July, 2020, whereby the authorities of Power Development Department have claimed to have taken over the possession of State land measuring 2 kanals falling in Khasra No.96 in Village Chowadhi for construction of Receiving Station;
- (III) Communication of respondent No.5 dated 25th of June, 2019, addressed to respondent No.4, whereby the former has certified to the later, by reference to revenue documents, that the land measuring 2 kanals each falling under Khasra No.96 and 1328 situated at Village Chowadhi is State land.

2) The impugned communications have been assailed by the petitioner, primarily, on the ground that the subject land measuring 2 kanals falling under Khasra No.96 is being forcibly taken over by the respondents without adopting any due process of law. It is claimed that the petitioner is an occupancy tenant of the subject land and, therefore, is entitled to compensation, should the respondents decide to acquire the said land.

3) With a view to appreciating the grievance of the petitioner, as projected by him in this petition, it is necessary to notice few material facts.

4) The subject land is a land measuring 2 kanals falling under Khasra No.96 of estate Chowadhi in District Jammu. As admitted by

the respondent revenue authorities, as per Girdawari entries from the year 1958 to Rabi 1962, the subject land is recorded in the ownership of State with the names of Balak Ram, Santokh Singh and Daleep Singh in equal shares as “Maroosi Hissadaran” recorded as persons in cultivating possession. From Kharief 1962 to 1974, the subject land is recorded under the ownership of Rasal Singh and others and under the cultivation of Balak Ram, Santokh Singh and Daleep Singh as “Hissadaran bahissa barabar”. However, with effect from Rabi 1975 to Rabi 1982, the Girdawari entry of said Khasra number is recorded as under ownership of State and in cultivating possession of Balak Ram, Santokh Singh and Daleep Singh. From Kharief 1982 to Rabi 1987, the subject land is recorded under the ownership of State with names of Balak Ram, Santokh Singh and Daleep Singh in the tenancy column. However, from Kharief 1987 till date, the said Khasra Number is recorded under the ownership of State with names of Balak Ram, Santokh Singh and Daleep Singh as “Maroosi” under Section 4(4) in the tenancy column. This is the indisputable position recorded in the revenue records.

5) The dispute appears to be with regard to the attestation of mutation No.272 dated 08.06.1957. As per the petitioner, by virtue of mutation No.272 dated 08.06.1957, the land falling in Khasra No.96, 486 and 487, beyond 182 kanals of ceiling limit of the erstwhile owner was escheated to the State by operation of Big Landed Estates Abolition Act, 1950 [“the Act”] and simultaneously with the

extinction of ownership right of the erstwhile owner, the tillers, namely, Balak Rama, the father of the petitioner, and his brothers, were conferred the occupancy tenancy rights. It is claimed that it is on the basis of aforesaid mutation, the petitioner has all along been shown in the revenue records as occupancy tenant of the land including the subject land measuring 2 kanals.

6) On the contrary, the official respondents also placing reliance upon mutation No.272 dated 08.06.1957, submit that in terms of said mutation, not only the land exceeding the ceiling limit of the erstwhile owners, namely, Dharmoo and others was escheated to the State but the rights of occupancy of Balak Ram and others, whose ownership land was more than 182 kanals, were also extinguished. It is, thus, submitted by Mr. Nanda, learned Sr. AAG, appearing for the Revenue Department, that the subsequent entries favouring the petitioner are fictitious and without any authority of law. He further argues that the respondents have not been able to find out any order of the competent authority in the Revenue Record which would demonstrate the conferment of occupancy rights qua the subject land on the petitioner or his forefathers. He, therefore, concludes by saying that the subject land, which is a part of big chunk of land, is indisputably the State land with which the petitioner or any other person has no right, title or interest.

7) Having heard learned counsel for the parties and perused the record, it is seen that before the Court there are two versions of

mutation No.272 dated 08.06.1957, one placed on record by the petitioner with his writ petition and one relied upon and placed on record by respondent No.1 to 5 and 8 along with their objections filed through Mr. S. S. Nanda, learned Senior Additional Advocate General. In the given facts and circumstances, it is, however, difficult for this Court to believe one version and ignore the other. This makes the task of this Court not only difficult but very complicated. However, without going into this aspect of the matter, I would like to address the controversy on the basis of facts which are indisputable and with regard to which the parties are at *ad idem*.

8) Admittedly and indisputably, in the year 2007, when the Jammu and Kashmir Big Landed Estates Abolition Act, Svt. 2007 (1950 AD) (hereinafter “the Act of Svt. 2007” for short), the recorded position of the subject land was that it was in the ownership of State with Balak Ram, Santokh Singh and Daleep Singh, in equal shares, as “Maroosi Hissadaran” recorded in the tenancy/cultivation column. The Act of Svt. 2007, it needs to be emphasized, was promulgated by Shri Yuvaraj under Section 5 of the Jammu and Kashmir Constitution Act, 1996, on 1st of Kartik, 2007, with a view to achieving the objective of abolition of big landed estates of the proprietors and to transfer the land held by them to the actual tillers. The Act of Svt. 2007 was the first milestone towards agrarian reforms set in motion by the then Shri Yuvaraj. Under Section 4 of the Act of Svt. 2007, the right of ownership held by a proprietor in land other than the land mentioned

in sub-section (2) shall extinguish and cease to vest in him from the date of coming into force of the Act. Reference to sub-section (2) would make it abundantly clear that with the promulgation of the Act of Svt. 2007, a landlord was not permitted to hold land in ownership beyond 182 kanals. Such land as exceeded the aforesaid ceiling limit vested in the State and the ownership rights of the land were extinguished. If this land, which, by operation of law, vest in the State, was in actual cultivating possession of the tiller in Kharief, 2007, same was to be transferred to such tiller to the extent of his actual possession provided the land so transferred along with land which he owned did not exceed 160 kanals in ownership right. There is, thus, found no provision in the Act of Svt. 2007, which would provide for the occupancy tenants to retain their occupancy rights even qua the land that vested in the State by operation of Section 4 of the Act. As a matter of fact, the occupancy tenants were also granted ownership rights qua the land that vested in the State by operation of Section 4 with the extinguishment of ownership rights of landlord though to a limited extent as prescribed in Section 5(6)(1) of the Act of Svt. 2007.

9) Viewed from this angle, one would tend to believe the document of mutation i.e. the mutation No.272 dated 08.06.1957, placed on record by the respondents. A perusal of mutation No.272 (supra) placed on record by Mr. Nanda, Sr. AAG, makes it abundantly clear that ownership rights of erstwhile owners, namely, Dharmoo and

others, were extinguished in terms of mutation No.328 and the tenants, namely, Balak Ram and others, were provided opportunity to establish their claim. On enquiry, it was found that the subject land in Kharief, 2007 (BK) was recorded in the personal cultivation of tenants i.e. Balak Ram and others but the same could not be transferred in their favour because the ownership land possessed by Balak Ram and others was found to be more than 182 kanals i.e. much beyond the ceiling limit prescribed under Section 5(6) of the Act of Svt. 2007. It is because of this reason, no ownership rights qua the land measuring 36 kanals and 8 marlas comprised in Khasra Nos.486, 487 and 96, could be conferred on Balak Ram and others, the predecessor-in-interest of the petitioner.

10) Be that as it is, it appears that though the ancestors of the petitioner were not found entitled to conferment of ownership rights but there was no specific order by any competent authority determining their occupancy rights. Undoubtedly, the necessary consequence of not finding the occupancy tenants like Balak Ram, father of the petitioner, entitled to any ownership rights qua the land vested in the State by operation of Section 4, was the termination of occupancy tenancy. It appears that since there was no formal order of termination of occupancy rights of Balak Rama and others and there was no process undertaken to evict them, they continued to remain in possession and were recorded in the tenancy column from time to time. Sometimes they were recorded as tenants in cultivating

possession simpliciter and on some occasions they were recorded as “Maroosi” i.e. occupancy tenants.

11) Admittedly, on the date the respondents decided to take over possession of 2 kanals of land out of Khasra No.96 for construction of some Receiving Station, the recorded position in the revenue records was that the petitioner was an occupancy tenant in cultivating possession of the subject land. I have not been able to find out nor could Mr. Nanda point out that any remedial measures were taken by the competent authorities to set the record straight and to correct the Girdawari and Jamabandi entries etc. recorded in favour of the petitioner.

12) Having a ringside appraisal of the whole issue and in the peculiar facts and circumstances of the case, I am of the view that the petitioner cannot be fastened with the whole blame. The mess, as it appears, is the result of inefficiency of the revenue officers concerned. The unholy alliance between the petitioner and the revenue officials concerned also cannot be ruled out.

13) Be that as it is, the fact remains that the petitioner and before him his ancestors should have been evicted from the subject land right in the year 1950 or at least when mutation No.272 of 1957 was attested. That, however, did not happen and the petitioner and his predecessors-in-interest continued to be in cultivating possession of the subject land as occupancy tenants and this position is clearly reflected in the revenue records and is corroborated by the stand of

official respondents. It has also been brought to my notice that the subject land has already been taken over by Power Development Department and the construction of Receiving Station has been going on ever since. This also makes the issue fait accompli.

14) In these circumstances and for the reasons stated above, this petition is disposed of by providing as under:

- (i) The Assistant Commissioner, Revenue, Jammu, along with Tehsildar, Bahu, shall conduct an in-depth enquiry in the matter in the light of observations made hereinabove in the judgment and the referred provisions of the Act of Svt. 2007, as also other applicable provisions of law and shall make recommendations to the Deputy Commissioner, Jammu.
- (ii) The Committee of Revenue Officers aforesaid, which is entrusted the job of holding enquiry, shall in particular find out the reasons and circumstances under which the petitioner and his predecessors-in-interest continued to remain in possession of the land even after attestation of mutation No.272 dated 08.06.1957. The Committee shall also find out as to how petitioner and his predecessors-in-interest remained in cultivating possession of the land when in terms of mutation No.272 of 1957 they had ceased, in law, to be the occupancy tenants.
- (iii) The Committee shall also find out as to why and how different entries in the tenancy column came to be made from time to time by the revenue officers and, if

possible, identify the officers responsible for the lapse, if any.

- (iv) Should the Committee find no illegality in the matter or that to the error or omission, if any, committed by the revenue authorities, the petitioner was not in any manner contributory, he shall be deemed to be the occupancy tenant and the Deputy Commissioner, Jammu, shall, accordingly, initiate action under the relevant provisions of Land Acquisition Law to work out permissible compensation payable to the petitioner as occupancy tenant. The requisite funds for acquisition shall be provided by the Power Development Department, which has already taken over the land and has been in the process of constructing the Receiving Station.
- (v) The whole exercise, as indicated above, shall be conducted by the named respondents within a period of four months from the date copy of this judgment along with paper book is served upon the respondents

15) Disposed of along with connected CM(s)

(Sanjeev Kumar)
Judge

Jammu
16.06.2021
“Bhat Altaf, PS”

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**

Judgment pronounced today on 16.06.2021 in terms of Rules 138 (3) of the Jammu and Kashmir High Court Rules, 1999.

(Javed Iqbal Wani)
Judge